

**Before the  
Commission on Common Ownership Communities**

**In the Matter of**

Richard and Christina Meyers  
19909 Hamil Circle  
Gaithersburg, MD 20879,

Complainants,

v.

Montgomery Village Foundation, Inc.  
10120 Apple Ridge Road  
Montgomery Village, MD 20886,

Respondent.

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Case No. 325-O  
December 24, 1996

**DECISION AND ORDER**

The above-entitled case, having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, pursuant to Sections 10B-5(i), 10B-9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1994, as amended, and the Commission, having considered the testimony and evidence of record, finds, determines and orders, as follows:

**Background**

On January 2, 1996, Richard and Christina Meyers, owners of 19909 Hamil Circle, Gaithersburg, Maryland (Complainants), filed a complaint with the Office of Common Ownership Communities. Complainants allege that the Montgomery Village Foundation, Inc. (Respondent or MVF), unreasonably required the removal of an awning installed above the front entrance of their home.

By letter dated January 16, 1996, on behalf of MVF, Diane B. Stasiewicz, Director of Architectural Control for MVF, responded to the complaint. She indicated that the Meyers had installed an awning above their front entrance door without receiving prior approval from the MVF Architectural Review Board, that the Meyers did pursue approval through all internal avenues for dispute in MVF and MVF continued to require removal of the awning.

Inasmuch as the matter was not resolved through mediation, this dispute was presented to the Commission on Common Ownership Communities for action pursuant to Section 10B-11(e) on June 5, 1996, and the Commission voted that it was a matter within the Commission's jurisdiction, and the matter was scheduled for public hearing on July 17, 1996.

### **Findings of Fact**

Based on the testimony and evidence of record, the Panel makes the following findings of fact:

1. Mr. and Mrs. Meyers are the owners of 19909 Hamil Circle, Gaithersburg, Maryland, a residence in "The Estates of Montgomery Village" community which is part of the East Village Homes Corporation within the Montgomery Village Foundation.

2. Mr. Meyers testified that they wanted to install an awning over their front door because the door was deteriorating due to exposure to sun and weather and to offer people at the front door some protection from weather. The front design of their house includes a paladin window making other possible architectural approaches to solving these problems less appropriate in their opinion.

3. Mrs. Meyers testified that before ordering the awning she had called the MVF office and asked whether awnings were permitted and was told that they were and that no approval would be required for installation of an awning. She testified that she believed that this conversation took place early in July 1994 with "Judy" in the Architectural Control Department and that she was told that awnings needed to complement the color scheme of the house.

4. Ms Stasiewicz testified that two women named "Judy" worked in the MVF Architectural Control Department, Judy Palmer and Judi White. Both Ms Palmer and Ms White testified that they had no memory of such a telephone conversation with anyone and that the conversation described by Mrs. Meyers was unlikely because, in the normal course, each would have asked in response to any owner inquiry other than one regarding plantings that an application form be submitted.

5. In documents submitted and in testimony the Meyers indicated that the awning was carefully selected to complement the front of their house. The awning then was ordered and installed.

6. By letter dated August 11, 1994, Ms White informed the Meyers that the installation of the awning above the front entrance of their house without prior approval was a violation of the MVF covenants dealing with architectural control and requesting that the Meyers complete and return by September 15, 1994 the enclosed

Property Improvement Request (PIR) form for consideration by the Architectural Review Board. The letter indicated that the Board would consider the application within two to four weeks and notify the Meyers of their decision.

7. By letter dated August 23, 1994, the Meyers submitted a completed PIR form with a letter of explanation and a photograph of the awning.

8. By letter dated September 9, 1994, Ms White informed the Meyers on behalf of the Architectural Review Board that their application for an awning above the front entrance of their house had been denied because it is architecturally incompatible with the front of their house. The letter included a request that the awning be removed by October 15, 1994. It also conveyed that this decision may be appealed to the MVF Executive Committee.

9. By letter dated November 10, 1994, Ms Stasiewicz informed the Meyers, on behalf of the MVF Executive Committee, that the Committee had carefully reviewed their appeal of the Architectural Review Board decision and determined to uphold the Board's denial of their application. She noted that the Executive Committee had determined that awnings had never been approved for installation above front entrance doors in residential communities in Montgomery Village. She added regret about the confusion resulting from Mrs. Meyers' conversation with an architectural control staff member.

10. By letter dated January 17, 1995, Ms Stasiewicz conveyed to the Meyers the request of the MVF Executive Committee that the awning be removed by March 30, 1995. She informed them that if the awning was not removed the continuing violation of the community's covenants would be referred for legal action. This letter also informed the Meyers of their right to appeal to the Commission on Common Ownership Communities.

11. By letter dated March 7, 1995, the Meyers requested that the MVF Executive Committee reconsider their decision regarding the awning. In support of this request, the Meyers cited an example of an approved awning above a residential entrance in another community in Montgomery Village, indicated their disagreement with certain design considerations and conclusions regarding architecture in their community, and recited their efforts on this and previous occasions to comply with the architectural approval requirements of the community.

12. By letter dated April 21, 1995, Ms Stasiewicz informed the Meyers that at the meeting of the MVF

Executive Committee held on April 18, the Committee had given careful consideration to the Meyers' letter requesting reconsideration but had again denied their application. She conveyed the Executive Committee request that the awning be removed by May 30, 1995. She reiterated that awnings are not allowed above front entrances of residences and indicated that the one they had identified in their letter was above a rear patio door. She also reminded them that the community covenants require that all exterior modifications be approved by the Architectural Review Board. The letter again included a statement of the right to appeal to the Commission on Common Ownership Communities.

13. During the following months there were a number of letters between the Meyers and MVF. Included in this correspondence were a number of questions from the Meyers about the MVF awning policy, how it had developed and how it might be changed. They asked specifically about a provision of the community documents titled "Amendments Affecting Local Community or Communities Only," indicating that they thought that a change to the awning policy for their community might be effected by the process described in that section. Ms Stasiewicz replied that she was not aware of any prior application of that section and was not in a position to offer an interpretation of that language.

14. The provision cited by the Meyers is found in the Declaration of Covenants, Conditions and Restrictions for the East Village Homes Corporation at Article IX "General Provisions" and is Section 4. The language of this section is:

The Montgomery Village Foundation is hereby given the right to permit such amendments to these covenants and restrictions as are local in character and apply to one or more of the local communities within Montgomery Village; provided, however, such local community or communities affected shall be required by the Foundation to comply with the three-fourths ( $3/4$ ) and two-thirds ( $2/3$ ) voting requirements set forth in Section 2 [sic] above and written notice of the proposed amendment shall be sent to every Owner of a Private Dwelling Unit or Multifamily Rental Unit within such local community or communities at least ninety (90) days in advance of any action taken.

15. The Meyers continued to press Ms Stasiewicz to determine who could give them guidance on the

implementation of this section of the Covenants. Ms Stasiewicz indicated in a letter dated October 17, 1995 that changes in architectural criteria would have to be proposed to the Architectural Review Board. Mr. Meyers testified that he had spoken with Peter Christian of the Foundation staff about using this procedure to change the architectural criteria for awnings and Mr. Christian had said that he was not aware of previous use of this section of the Covenants and could not advise them what to do.

16. Mr. and Mrs. Meyers prepared a petition titled "Petition of the Allowance of Awnings in the Estates of Montgomery Village". The text of the petition reads:

We the undersigned, respectfully request modification of the Architectural Criteria of East Village, Ashford Subdivision, Estates of Montgomery Village (Toll Brother Development) to include a provision for entrance awnings. This provision shall permit awnings of superior quality, durable construction, and compatible color with the exterior trim to be permitted within the development.

By letter dated November 11, 1995, they submitted this petition with approximately 73 signatures to MVF with a letter indicating that it had been signed by two-thirds of the households in the Estates of Montgomery Village. The Meyers appear to have understood that the Architectural Criteria of the development could be amended under the provisions of the local homes corporation covenants. They requested that the Architectural Review Board reconsider their awning application in light of the petition.

17. By letter dated December 1, 1995, Ms Stasiewicz conveyed to the Meyers that their petition had been received and referred to the MVF Executive Committee which apparently considered it as another appeal of the denial of the awning application and again denied the application. Ms Stasiewicz further indicated that architectural control and the architectural control criteria within Montgomery Village fall entirely within the jurisdiction of the Foundation. The provision for amending local documents is in the local homes corporation covenants. She indicated that the Foundation will consider recommendations from homeowners and local boards but do have the ultimate authority to decline to accept those recommendations.

18. The Declaration of Covenants, Conditions and

Restrictions for the East Village Homes Corporation, dated May 14, 1984, includes a number of relevant provisions.

In the second introductory paragraph it says:

WHEREAS, Developer desires that said East Village shall become part of a larger community known as "MONTGOMERY VILLAGE" to be developed over a period of time, and consisting of a number of local communities, including East Village,... (emphasis added)

Article VIII "Architectural Control Committee" includes the following language:

...no building, fence, wall or other structure shall be commenced, erected or maintained within East Village nor shall any exterior addition to or change or alteration therein be made until the plans and specifications...shall have been submitted to and approved in writing... by the Board of Directors of the Montgomery Village Foundation or by an Architectural Control Committee consisting of three (3) or more persons appointed by the Board.... Any such exterior addition to or change or alteration made without application having first been made and approval obtained as provided above, shall be deemed to be in violation of this covenant and may be required to be restored to the original condition at Owner's cost. (Emphasis added).

Article IX "General Provisions" includes two sections which provide for amendments to the Declaration. The first is Section 3 "Duration and Amendment" which provides, to the extent relevant here, that the Declaration may be amended by "an instrument signed by not less than two-thirds (2/3) of the Owners of all Private Dwelling Units and Multifamily Rental Units within Montgomery Village that are subject to this Declaration...." There are other conditions stipulated which are not relevant to this case. The only relevance of the language quoted is that the Meyers raised a question regarding the purpose of the provision at Section 4 of this Article (recited at paragraph 14, above) in light of the interpretation given to it by the witnesses and attorney for MVF. The Meyers suggested that the two sections are duplicative and redundant as interpreted by MVF personnel.

19. In 1994, the Montgomery Village Foundation Architectural Review Board published a Montgomery Village Residential Design Manual which says of awnings, "Awnings - Approval Required: You must retain and maintain original awnings provided by the developer and, when necessary, replace them with similar substitutes. The Board will review applications for new awnings individually and prefers plain awnings in solid colors than blend with your exterior house colors." This document was made available for MVF residents to purchase through the community newsletter late in 1994.

20. The Meyers introduced evidence of a number of awnings they considered to be precedent for the installation of their awning. Ms Stasiewicz addressed each instance to explain why the MVF Architectural Control staff believed them to be inapposite. Ms Stasiewicz indicated that there was no instance to her knowledge in which an awning had been approved for installation above what the Architectural Control staff and the Architectural Review Board considered to be a front entrance of a residence after sale by the developer. While reasonable people may find the designation of the front entrance to be a matter subject to difference of opinion, so long as written approval by the appropriate MVF architectural control agent is required and those bodies maintain a consistent interpretation, the architectural control standard is reasonable.

21. Ms Stasiewicz testified that there are approximately 800 houses in the East Village Homes Corporation.

22. On behalf of MVF and in response to a request from the panel, a document was prepared by counsel based on information supplied by Ms Stasiewicz which outlines the procedures for adoption of and revisions to architectural criteria subdivisions in Montgomery Village. The responsibility and authority for adoption and revision is exercised entirely by MVF staff and officials.

### Conclusions of Law

The Commission concludes, based on a preponderance of the evidence, including testimony and documents admitted into evidence, and after full and fair consideration of the evidence of record, that:

1. In accordance with Article VIII of the Declaration of Covenants, Conditions and Restrictions of the East Village Homes Corporation, as recited in Findings of Fact paragraph 18, above, written approval by the MVF Board of

Directors or Architectural Review Committee is required for any exterior addition or alteration to a house under the Declaration. Thus, the Meyers were not entitled to rely on a telephone conversation with anyone in the MVF office for approval prior to purchasing their awning.

2. Under the East Village Homes Corporation Declaration, as quoted in Findings of Fact paragraph 18, above, the architectural control function is entirely vested in the MVF Board of Directors and the Architectural Review Committee which functions under the authority of the MVF Board of Directors. The Architectural Criteria for each development within MVF are adopted and revised by the MVF Board of Directors.

3. The testimony of the MVF architectural review staff and the interpretation offered by counsel that the only evidence and reasonable interpretation of the phrase "local community" in Section 4 of Article IX with relation to Amendments Affecting Local Community or Communities Only which allows amendments to "these covenants and restrictions as are local in character and apply to one or more of the local communities within Montgomery Village : " (emphasis added) is that it applies to changes to the Declaration of the Corporation. That means that the community is the East Village and that the amendment must apply to the provisions of the Declaration. The Declaration has no architectural design provisions. The responsibility for architectural control and guidance is vested only in the Foundation. The petition of the Meyers to allow awnings in The Estates was given reasonable consideration by the MVF Executive Committee.

4. The determination by the Architectural Review Board to deny the Meyers' awning which was upheld by the MVF Executive Committee is reasonable and consistent with the general plan of development in accordance with the law as set forth in Kirkley v. Seipelt, 212 Md. 127, 128 A.2d 430 (1957).

### Order

In view of the foregoing, and based on the evidence of the record, for the reasons set forth above, the Commission orders:

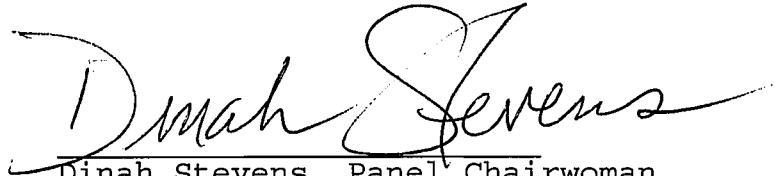
the Meyers must remove the awning which they installed above the front entrance of their home within sixty (60) days of the date of this Order, and restore the condition of the front of their home within the same period or such period as is agreed to by the MVF Executive Committee if



the Meyers are considering an alternative entrance treatment and have consulted with the MVF regarding the design and installation of such alternative design.

The foregoing was concurred in by panel members Krampf, Glancy and Stevens.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days from the date of this Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.

  
Dinah Stevens, Panel Chairwoman  
Commission on Common Ownership  
Communities